

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

CDX GAS, LLC,

Plaintiff,

v.

Civil Action No. 1:07CV127
(STAMP)

CFS FARMS, LLC,
a West Virginia limited
liability company and
CLARENCE S. FIBER, as manager
of CFS Farms LLC and in
his individual capacity,

Defendants.

ORDER CONFIRMING THE PRONOUNCED ORDER OF THE COURT
SETTING SCHEDULE FOR FURTHER BRIEFING
ON DEFENDANTS' MOTION TO DISMISS,
HOLDING IN ABEYANCE DEFENDANTS' MOTION TO QUASH SUBPOENA
AND CONTINUING GENERALLY THE HEARING ON PLAINTIFF'S
MOTION FOR A PRELIMINARY AND PERMANENT INJUNCTION

On January 22, 2008, the plaintiff, CDX Gas, LLC, filed a renewed motion seeking a preliminary and permanent injunction requiring the defendants, CFS Farms, LLC ("CFS Farms"), and Clarence S. Fiber ("Fiber"), to allow the plaintiff on CFS Farms' property to drill for coal bed methane gas.¹ By order dated January 22, 2008, this Court directed the parties to appear for a hearing on the matter on February 6, 2008, and setting a deadline

¹ On September 18, 2007, the plaintiff filed a motion for a temporary restraining order and for a preliminary and permanent injunction to require the defendants to allow the plaintiff to enter defendant CFS Farms' property for the purpose of surveying the land. After the plaintiff effected service on both defendants, this Court scheduled a hearing on the matter for September 28, 2007. Before the hearing date, the parties agreed to allow the plaintiff onto the property to survey the land. Upon a motion by the plaintiff, this Court vacated the hearing.

for the defendants to file a response. In response, the defendants filed a motion to dismiss, arguing in part that abstention is proper under Colorado River Conservation Dist. v. United States, 424 U.S. 800 (1976), and that, therefore, this Court should decline to exercise jurisdiction.

Additionally, the defendants filed a motion to quash to a subpoena executed upon defendant Fiber. In that motion, the defendants objected to the order of the subpoena to produce certain business documents. The plaintiffs responded.

At a hearing on February 6, 2008, this Court heard arguments on the defendants' grounds for abstention in their motion to dismiss. After hearing the parties' arguments, this Court believes that further briefing on the matter of abstention would be appropriate. Accordingly, the plaintiff shall file on or before **February 11, 2008** a response to the defendants' motion to dismiss. The defendants shall file their reply on or before **February 19, 2008**.

Also at the February 6, 2008 hearing, the defendants informed this Court that they no longer objected to producing some of the documents that were the subject of the subpoena, namely CFS Farms LLC's annual report filed with the West Virginia Secretary of State for calendar year 2007, the articles of organization for CFS Farms LLC., and the operating agreement (to the extent that one exists) for CFS Farms, LLC. The defendants continued to object to production of appraisals performed in the last five years on the

real property that comprises CFS Farms LLC for purposes of any bank loans that are secured by the property, and the most recent balance sheet prepared for CFS Farms LLC. Based upon the defendants' statements that they no longer objected to producing CFS Farms LLC's annual report filed with the West Virginia Secretary of State for calendar year 2007, the articles of organization for CFS Farms LLC., and any existing operating agreement for CFS Farms, this Court directed the defendants to produce these documents and held in abeyance the motion to quash as it pertains to the remaining documents in dispute.²

Finally, this Court ordered that the hearing on the plaintiff's motion for a preliminary and permanent injunction be continued generally, pending this Court's receipt and review of the parties' briefing on the defendants' motion to dismiss.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this order to counsel of record herein.

DATED: February 8, 2008

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE

²The remaining documents in dispute are (1) appraisals performed in the last five years on the real property that comprises CFS Farms LLC for purposes of any bank loans that are secured by the property, and (2) the most recent balance sheet prepared for CFS Farms LLC.